

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

MICHAEL DWAIN SMITH

v.

SHERIFF LARRY OLIVAREZ, ET AL.

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C.A. NO. C-05-416

**MEMORANDUM OPINION AND ORDER OF DISMISSAL**

On September 29, 2005, the United States Magistrate Judge filed her Memorandum and Recommendation in this cause (D.E. 10). After ample opportunity, no objections have been filed by either party. This Court regards such omission as each party's agreement with and acceptance of the Magistrate Judge's findings of fact and conclusions of law. Having reviewed the pleadings on file, the Court finds no clear error in the Magistrate Judge's Memorandum and Recommendation. *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996). This Court adopts as its own the findings and conclusions of the Magistrate Judge.

Accordingly, plaintiff's § 1983 claims against Sheriff Olivarez and Patrick Birmingham are dismissed with prejudice. To the extent plaintiff intended to raise state law claims of negligence or libel, those claims are dismissed without prejudice.

ORDERED this 24 day of October, 2005.

  
HAYDEN HEAD  
CHIEF JUDGE

